

Calendar No. 954

106TH CONGRESS
2^D SESSION

S. 2665

[Report No. 106-511]

To establish a streamlined process to enable the Navajo Nation to lease trust lands without having to obtain the approval of the Secretary of the Interior of individual leases, except leases for exploration, development, or extraction of any mineral resources.

IN THE SENATE OF THE UNITED STATES

MAY 25, 2000

Mr. KYL (for himself, Mr. DOMENICI and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

OCTOBER 31 (legislative day, SEPTEMBER 22), 2000

Reported by Mr. CAMPBELL, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To establish a streamlined process to enable the Navajo Nation to lease trust lands without having to obtain the approval of the Secretary of the Interior of individual leases, except leases for exploration, development, or extraction of any mineral resources.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Navajo Nation Trust
3 Land Leasing Act of 2000”.

4 **SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF**
5 **PURPOSES.**

6 (a) FINDINGS.—Recognizing the special relationship
7 between the United States and the Navajo nation and its
8 members, and the Federal responsibility to the Navajo
9 people, Congress finds that—

10 (1) the third clause of section 8, Article I of the
11 United States Constitution provides that “The Con-
12 gress shall have Power...to regulate Commerce...with
13 Indian tribes”, and, through this and other constitu-
14 tional authority, Congress has plenary power over
15 Indian affairs;

16 (2) Congress, through statutes, treaties, and
17 the general course of dealing with Indian tribes, has
18 assumed the responsibility for the protection and
19 preservation of Indian tribes and their resources;

20 (3) the United States has a trust obligation to
21 guard and preserve the sovereignty of Indian tribes
22 in order to foster strong tribal governments, Indian
23 self-determination, and economic self-sufficiency;

24 (4) pursuant to the first section of the Act of
25 August 9, 1955 (25 U.S.C. 415), Congress conferred
26 upon the Secretary of the Interior the power to pro-

1 mulgate regulations governing tribal leases and to
2 approve tribal leases for tribes according to regula-
3 tions promulgated by the Secretary;

4 (5) the Secretary of the Interior has promul-
5 gated the regulations described in paragraph (4) at
6 part 162 of title 25, Code of Federal Regulations;

7 (6) the requirement that the Secretary approve
8 leases for the development of Navajo trust lands has
9 added a level of review and regulation that does not
10 apply to the development of non-Indian land; and

11 (7) in the global economy of the 21st Century,
12 it is crucial that individual leases of Navajo trust
13 lands not be subject to Secretarial approval and that
14 the Navajo Nation be able to make immediate deci-
15 sions over the use of Navajo trust lands.

16 (b) PURPOSES.—The purposes of this Act are as fol-
17 lows:

18 (1) To establish a streamlined process for the
19 Navajo Nation to lease trust lands without having to
20 obtain the approval of the Secretary of the Interior
21 of individual leases, except leases for exploration, de-
22 velopment, or extraction of any mineral resources.

23 (2) To authorize the Navajo nation, pursuant to
24 tribal regulations, which must be approved by the
25 Secretary, to lease Navajo trust lands without the

1 approval of the Secretary of the Interior of the indi-
 2 vidual leases, except leases for exploration, develop-
 3 ment, or extraction of any mineral resources.

4 (3) To revitalize the distressed Navajo Reserva-
 5 tion by promoting political self-determination, and
 6 encouraging economic self-sufficiency, including eco-
 7 nomic development that increases productivity and
 8 the standard of living for members of the Navajo
 9 Nation.

10 (4) To maintain, strengthen, and protect the
 11 Navajo Nation's leasing power over Navajo trust
 12 lands.

13 (c) DEFINITIONS.—In this section:

14 (1) INDIAN TRIBE.—The term “Indian tribe”
 15 has the meaning given such term in section 4(e) of
 16 the Indian Self-Determination and Education Assist-
 17 ance Act (25 U.S.C. 450b(e)).

18 (2) NAVAJO NATION.—The term “Navajo Na-
 19 tion” means the Navajo Nation government that is
 20 in existence on the date of enactment of this Act.

21 (3) TRIBAL REGULATIONS.—The term “tribal
 22 regulations” means the Navajo Nation regulations
 23 as enacted by the Navajo Nation Council or its
 24 standing committees and approved by the Secretary.

1 **SEC. 3. LEASE OF RESTRICTED LANDS FOR THE NAVAJO**
 2 **NATION.**

3 The first section of the Act of August 9, 1955 (25
 4 U.S.C. 415) is amended—

5 (1) in subsection (d)—

6 (A) in paragraph (1), by striking “and” at
 7 the end;

8 (B) in paragraph (2), by striking the pe-
 9 riod and inserting a semicolon; and

10 (C) by adding at the end the following:

11 “(3) the term ‘individually owned Navajo In-
 12 dian allotted lands’ means Navajo Indian allotted
 13 land that is owned by 1 or more individuals located
 14 within the Navajo Nation;

15 “(4) the term ‘Navajo Nation’ means the Nav-
 16 ajo Nation government that is in existence on the
 17 date of enactment of this Act;

18 “(5) the term ‘Secretary’ means the Secretary
 19 of the Interior; and

20 “(6) the term ‘tribal regulations’ means the
 21 Navajo Nation regulations as enacted by the Navajo
 22 Nation Council or its standing committees and ap-
 23 proved by the Secretary.”; and

24 (2) by adding at the end the following:

25 “(e)(1) Any leases by the Navajo Nation for purposes
 26 authorized under subsection (a), except a lease for the ex-

1 ploration, development, or extraction of any mineral re-
 2 sources, shall not require the approval of the Secretary
 3 if the term of the lease does not exceed 75 years (including
 4 options to renew), and the lease is executed under tribal
 5 regulations that are approved by the Secretary under this
 6 subsection.

7 “(2) Paragraph (1) shall not apply to individually
 8 owned Navajo Indian allotted land located within the Nav-
 9 ajo Nation.

10 “(3) The Secretary shall have the authority to ap-
 11 prove or disapprove tribal regulations required under
 12 paragraph (1). The Secretary shall not have approval au-
 13 thority over individual leases of Navajo trust lands, except
 14 for the exploration, development, or extraction of any min-
 15 eral resources. The Secretary shall perform the duties of
 16 the Secretary under this subsection in the best interest
 17 of the Navajo Nation.

18 “(4) If the Navajo Nation has executed a lease pursu-
 19 ant to tribal regulations required under paragraph (1), the
 20 United states shall not be liable for losses sustained by
 21 any party to such lease, including the Navajo Nation, ex-
 22 cept that—

23 “(A) the Secretary shall continue to have a
 24 trust obligation to ensure that the rights of the Nav-
 25 ajo Nation are protected in the event of a violation

1 of the terms of any lease by any other party to such
 2 lease, including the right to cancel the lease if re-
 3 quested by the Navajo Nation; and

4 “(B) nothing in this subsection shall be con-
 5 strued to absolve the United States from any re-
 6 sponsibility to the Navajo Nation, including respon-
 7 sibilities that derive from the trust relationship and
 8 from any treaties, Executive Orders, or agreements
 9 between the United States and the Navajo Nation,
 10 except as otherwise specifically provided in this sub-
 11 section.”.

12 **SECTION 1. SHORT TITLE.**

13 *This Act may be cited as the “Navajo Nation Trust*
 14 *Land Leasing Act of 2000”.*

15 **SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF**
 16 **PURPOSES.**

17 (a) *FINDINGS.—Recognizing the special relationship*
 18 *between the United States and the Navajo Nation and its*
 19 *members, and the Federal responsibility to the Navajo peo-*
 20 *ple, Congress finds that—*

21 (1) *the third clause of section 8, Article I of the*
 22 *United States Constitution provides that “The Con-*
 23 *gress shall have Power...to regulate Commerce...with*
 24 *Indian tribes”, and, through this and other constitu-*

1 *tional authority, Congress has plenary power over In-*
 2 *dian affairs;*

3 (2) *Congress, through statutes, treaties, and the*
 4 *general course of dealing with Indian tribes, has as-*
 5 *sumed the responsibility for the protection and preser-*
 6 *vation of Indian tribes and their resources;*

7 (3) *the United States has a trust obligation to*
 8 *guard and preserve the sovereignty of Indian tribes in*
 9 *order to foster strong tribal governments, Indian self-*
 10 *determination, and economic self-sufficiency;*

11 (4) *pursuant to the first section of the Act of Au-*
 12 *gust 9, 1955 (25 U.S.C. 415), Congress conferred*
 13 *upon the Secretary of the Interior the power to pro-*
 14 *mulgate regulations governing tribal leases and to ap-*
 15 *prove tribal leases for tribes according to regulations*
 16 *promulgated by the Secretary;*

17 (5) *the Secretary of the Interior has promulgated*
 18 *the regulations described in paragraph (4) at part*
 19 *162 of title 25, Code of Federal Regulations;*

20 (6) *the requirement that the Secretary approve*
 21 *leases for the development of Navajo trust lands has*
 22 *added a level of review and regulation that does not*
 23 *apply to the development of non-Indian land; and*

24 (7) *in the global economy of the 21st Century, it*
 25 *is crucial that individual leases of Navajo trust lands*

1 *not be subject to Secretarial approval and that the*
2 *Navajo Nation be able to make immediate decisions*
3 *over the use of Navajo trust lands.*

4 **(b) PURPOSES.**—*The purposes of this Act are as fol-*
5 *lows:*

6 *(1) To establish a streamlined process for the*
7 *Navajo Nation to lease trust lands without having to*
8 *obtain the approval of the Secretary of the Interior*
9 *for individual leases, except leases for exploration, de-*
10 *velopment, or extraction of any mineral resources.*

11 *(2) To authorize the Navajo Nation, pursuant to*
12 *tribal regulations, which must be approved by the*
13 *Secretary, to lease Navajo trust lands without the ap-*
14 *proval of the Secretary of the Interior for the indi-*
15 *vidual leases, except leases for exploration, develop-*
16 *ment, or extraction of any mineral resources.*

17 *(3) To revitalize the distressed Navajo Reserva-*
18 *tion by promoting political self-determination, and*
19 *encouraging economic self-sufficiency, including eco-*
20 *nomie development that increases productivity and*
21 *the standard of living for members of the Navajo Na-*
22 *tion.*

23 *(4) To maintain, strengthen, and protect the*
24 *Navajo Nation's leasing power over Navajo trust*
25 *lands.*

1 (5) *To ensure that the United States is faithfully*
 2 *executing its trust obligation to the Navajo Nation by*
 3 *maintaining federal supervision through oversight of*
 4 *and record keeping related to leases of Navajo Nation*
 5 *tribal trust lands.*

6 **SEC. 3. LEASE OF RESTRICTED LANDS FOR THE NAVAJO**
 7 **NATION.**

8 *The first section of the Act of August 9, 1955 (25*
 9 *U.S.C. 415) is amended—*

10 *(1) in subsection (d)—*

11 *(A) in paragraph (1), by striking “and” at*
 12 *the end;*

13 *(B) in paragraph (2), by striking the period*
 14 *and inserting a semicolon; and*

15 *(C) by adding at the end the following:*

16 *“(3) the term ‘individually owned Navajo Indian*
 17 *allotted land’ means a single parcel of land that—*

18 *“(A) is located within the jurisdiction of the*
 19 *Navajo Nation;*

20 *“(B) is held in trust or restricted status by*
 21 *the United States for the benefit of Navajo Indi-*
 22 *ans or members of another Indian tribe; and*

23 *“(C) was—*

24 *“(i) allotted to a Navajo Indian; or*

1 “(ii) taken into trust or restricted sta-
 2 tus by the United States for an individual
 3 Indian;

4 “(4) the term ‘interested party’ means an Indian
 5 or non-Indian individual or corporation, or tribal or
 6 non-tribal government whose interests could be ad-
 7 versely affected by a tribal trust land leasing decision
 8 made by the Navajo Nation;

9 “(5) the term ‘Navajo Nation’ means the Navajo
 10 Nation government that is in existence on the date of
 11 enactment of this Act or its successor;

12 “(6) the term ‘petition’ means a written request
 13 submitted to the Secretary for the review of an action
 14 (or inaction) of the Navajo Nation that is claimed to
 15 be in violation of the approved tribal leasing regula-
 16 tions;

17 “(7) the term ‘Secretary’ means the Secretary of
 18 the Interior; and

19 “(8) the term ‘tribal regulations’ means the Nav-
 20 ajo Nation regulations enacted in accordance with
 21 Navajo Nation law and approved by the Secretary.”;
 22 and

23 (2) by adding at the end the following:

24 “(e)(1) Any leases by the Navajo Nation for purposes
 25 authorized under subsection (a), and any amendments

1 *thereto, except a lease for the exploration, development, or*
2 *extraction of any mineral resources, shall not require the*
3 *approval of the Secretary if the lease is executed under the*
4 *tribal regulations approved by the Secretary under this sub-*
5 *section and the term of the lease does not exceed—*

6 “(A) *in the case of a business or agricultural*
7 *lease, 25 years, except that any such lease may in-*
8 *clude an option to renew for up to 2 additional terms,*
9 *each of which may not exceed 25 years; and*

10 “(B) *in the case of a lease for public, religious,*
11 *educational, recreational, or residential purposes, 75*
12 *years if such a term is provided for by the Navajo*
13 *Nation through the promulgation of regulations.*

14 “(2) *Paragraph (1) shall not apply to individually*
15 *owned Navajo Indian allotted land.*

16 “(3) *The Secretary shall have the authority to approve*
17 *or disapprove tribal regulations referred to under para-*
18 *graph (1). The Secretary shall approve such tribal regula-*
19 *tions if such regulations are consistent with the regulations*
20 *of the Secretary under subsection (a) and any amendments*
21 *thereto. The Secretary shall review and approve or dis-*
22 *approve the regulations of the Navajo Nation within 120*
23 *days of the submission of such regulations to the Secretary.*
24 *Any disapproval of such regulations by the Secretary shall*
25 *be accompanied by written documentation that sets forth*

1 *the basis for the disapproval. Such 120-day period may be*
 2 *extended by the Secretary after consultation with the Nav-*
 3 *ajo Nation.*

4 “(4) *If the Navajo Nation has executed a lease pursu-*
 5 *ant to tribal regulations under paragraph (1), the Navajo*
 6 *Nation shall provide the Secretary with—*

7 “(A) *a copy of the lease and all amendments and*
 8 *renewals thereto; and*

9 “(B) *in the case of regulations or a lease that*
 10 *permits payment to be made directly to the Navajo*
 11 *Nation, documentation of the lease payments suffi-*
 12 *cient to enable the Secretary to discharge the trust re-*
 13 *sponsibility of the United States under paragraph*
 14 *(5).*

15 “(5) *The United States shall not be liable for losses*
 16 *sustained by any party to a lease executed pursuant to trib-*
 17 *al regulations under paragraph (1), including the Navajo*
 18 *Nation, except that—*

19 “(A) *nothing in this paragraph shall be con-*
 20 *strued to diminish the authority of the Secretary in*
 21 *furtherance of the trust obligation of the United*
 22 *States to ensure that the rights of the Navajo Nation*
 23 *are protected in the event of a violation of the terms*
 24 *of any lease by any other party to the lease, including*
 25 *the authority of the Secretary to cancel a lease; and*

1 “(B) nothing in this paragraph shall be con-
2 strued to absolve the United States from any responsi-
3 bility to the Navajo Nation, including any responsi-
4 bility that derives from the trust relationship of the
5 United States and from any treaties, Executive Or-
6 ders, laws, regulations, or agreements between the
7 United States and the Navajo Nation, except as other-
8 wise specifically provided in this subsection.

9 “(6)(A) An interested party may, after exhaustion of
10 tribal remedies, submit, in a timely manner, a petition to
11 the Secretary to review the compliance of the Navajo Nation
12 with any regulations approved under this subsection. If
13 upon such review the Secretary determines that the regula-
14 tions were violated, the Secretary may take such action as
15 may be necessary to remedy the violation, including re-
16 scinding the approval of the tribal regulations and re-
17 assuming responsibility for the approval of leases for Nav-
18 ajo Nation tribal trust lands.

19 “(B) If the Secretary seeks to remedy a violation de-
20 scribed in subparagraph (A), the Secretary shall—

21 “(i) make a written determination with respect
22 to the regulations that have been violated;

23 “(ii) provide the Navajo Nation with a written
24 notice of the alleged violation together with such writ-
25 ten determination; and

1 “(iii) prior to the exercise of any remedy or the
2 rescission of the approval of the regulation involved
3 and the reassumption of the lease approval responsi-
4 bility, provide the Navajo Nation with a hearing on
5 the record and a reasonable opportunity to cure the
6 alleged violation.”.

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[Report No. 106-511]

A BILL

To establish a streamlined process to enable the Navajo Nation to lease trust lands without having to obtain the approval of the Secretary of the Interior of individual leases, except leases for exploration, development, or extraction of any mineral resources.

OCTOBER 31 (legislative day, SEPTEMBER 22), 2000

Reported by Mr. CAMPBELL, with an amendment